IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISICTION

SUMMONS FOR JUDGMENT NO. 204 OF 2006

IN

SUMMARY SUIT NO. 411 OF 2006

FARIDA A. JABBAR ..PLAINTIFF

V/S

ABDUL KARIM HUSSAIN SAHIB

AND ANR. ..DEFENDANTS

DEVENOH MEHTA I/B LEGALEYE ASSOCIATES FOR PLAINTIFF.

S.P. SRIVASTAVA FOR DEFENDANTS.

CORAM : D.K. DESHMUKH, J.

DATE : 21ST AUGUST, 2006.

P.C.

1. Plaintiff has filed the present suit for recovery of the amount due and payable to the plaintiff in relation to the flat which were sold by the Defendants. According to the plaintiff under the contract between the plaintiff and the defendants, the defendant were liable to pay this amount to the society but because the defendant did not make the payment of this amount to the society, plaintiff paid the amount and therefore the present suit has been filed for reimbursement. But

admitted position is that the plaintiff before

making payment to the society at no point of time informed the defendants that the plaintiff is making this payment to the society on behalf of the defendants and reserves his right to claim the reimbursement from the defendants in relation to the amount in excess of Rs.1,82,000/-. Even there is no document indicating that the plaintiff informed the defendant that this amount is demanded by the society. In my opinion the plaintiff before making payment to the society should have informed the defendants that the society has demanded the amount, that the defendant should pay the amount by a particular date, that if the defendant does not pay the amount by that date the plaintiff will make the payment and claim reimbursement from defendants. Had this been done, it would have been open to the defendants to challenge the demand made by the society. Accepting the entire case of the plaintiff at face value, it appears that if the defendant is made to reimburse the amount, defendant will loose his right to challenge the action of the society demanding this amount. In my opinion, therefore, this defence available to the defendants is not merely a moonshine defence. The defendant is entitled to leave to defend. Summons

for Judgment is disposed of. Defendant is granted leave to defend the suit. Written statement to be

filed within 8 weeks. Suit be transferred to commercial cause list.

(D.K. DESHMUKH, J.)